

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ILLINOIS CENTRAL RAILROAD COMPANY  
the CITY OF LINCOLN, and the STATE  
of ILLINOIS, DEPARTMENT OF  
TRANSPORTATION.

No. T08-0166

Stipulated Agreement regarding )  
improving public safety at the Logan )  
Street highway-rail grade crossing )  
of the Company's track in Lincoln, )  
Logan County, Illinois, designated )  
as crossing AAR/DOT #292 766L )  
railroad milepost 44.10-B. )

Chicago, Illinois  
November 3, 2010

Met pursuant to notice at 10:00 a.m.

BEFORE:

MR. TIMOTHY DUGGAN, Administrative Law Judge.

1 APPEARANCES:

2 MR. THOMAS J. HEALEY  
17641 South Ashland Avenue  
3 Homewood, Illinois 60430  
appeared for Petitioner;  
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5 MR. JOSEPH VON DE BUR  
527 East Capitol Avenue  
6 Springfield, Illinois 62701  
appeared for Commission Staff,  
7 telephonically.

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SULLIVAN REPORTING COMPANY, by  
18 Teresann B. Giorgi, CSR

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I N D E X

<u>Witnesses:</u>	<u>Dir.</u>	<u>Crx.</u>	<u>Re-</u> <u>dir.</u>	<u>Re-</u> <u>crx.</u>	<u>By</u> <u>Examiner</u>
NONE					

E X H I B I T S

<u>STAFF'S</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE</u>
1	48	48
2	48	48

1 JUDGE DUGGAN: Pursuant to the authority vested  
2 in me by the State of Illinois and the Illinois  
3 Commerce Commission, I now call Docket T08-0166 for  
4 hearing.

5 May have appearances for the record.

6 Mr. Von De Bur.

7 MR. VON DE BUR: Joe Von De Bur, capital V-o-n,  
8 capital D-e, capital B-u-r, Rail Safety Specialist  
9 with the Illinois Commerce Commission, which is at  
10 527 East Capitol Avenue, Springfield, Illinois  
11 62701.

12 JUDGE DUGGAN: Okay. And do you see anybody  
13 else here on this case, or is it a different case?

14 MR. VON DE BUR: Did I hear Tom Healey there?

15 MR. HEALEY: You did.

16 JUDGE DUGGAN: Did you want to enter your  
17 appearance in this case, Mr. Healey

18 MR. HEALEY: Yes.

19 Thomas Healey, H-e-a-l-ey, attorney  
20 for Illinois Central Railroad Company. My address  
21 is 17641 South Ashland Avenue in Homewood, Illinois  
22 60430, telephone number is 708-332-4381.

1 JUDGE DUGGAN: Okay. This is a continuance from  
2 a hearing held October 5th on a petition for  
3 extension of time to complete some work in Logan  
4 County, the city of Lincoln. And we were going to  
5 see if you -- Mr. Von De Bur, Mr. Healey and the  
6 Railroad could come to terms on a schedule.

7 So do we have a status report on that?  
8 Either one of you that wants to proceed.

9 MR. VON DE BUR: Mr. Healey and I did come to an  
10 agreement on a proposed order pending the completion  
11 of the job at Logan Street in Lincoln.

12 We have received a completion report  
13 as well as an inventory report. And an inspection  
14 was conducted last week by our signal inspectors and  
15 found the installation to be compliant with both  
16 state and federal regulations.

17 If I may, I would like to submit the  
18 agreed order for your use, your Honor.

19 JUDGE DUGGAN: I think we already had one  
20 supplement which you were going to submit an agreed  
21 order and that noted the crews were on the site, is  
22 that correct, Mr. Von De Bur?

1       MR. VON DE BUR:   That's correct.   We had --  
2   there has been one supplemental order for the  
3   extension of time.   This would be a second  
4   supplemental order for extension of time, also.

5       JUDGE DUGGAN:   Okay.   And this is the same order  
6   you submitted to me previously, right, the --

7       MR. VON DE BUR:   No, sir.   It's one that  
8   Mr. Healey and I and IDOT had reviewed and agreed  
9   upon since our last hearing.

10      JUDGE DUGGAN:   Okay.   Well, maybe I'm dreaming  
11   this, but I thought we had some meeting where you  
12   submitted an order that basically was extending --  
13   granted the extension of time October 30th, I think.  
14   And then I said, Well, let's not do that because  
15   there's no point in extending it if they don't  
16   finish it by that time.   You don't recall that?

17      MR. VON DE BUR:   I do not.

18      JUDGE DUGGAN:   Okay.   Well, in any event, this  
19   one appears to -- I'll review this -- give me a  
20   second.

21      MR. VON DE BUR:   If it's acceptable to  
22   Mr. Healey, I can submit this to you, your Honor.

1       MR. HEALEY: Joe, I'm pulling up my e-mails  
2 right now. I don't remember seeing it, but  
3 obviously there's a lot of stuff going on so I may  
4 have seen it.

5               As long as the extended date is taking  
6 us past the completion date, I'm fine with it.

7       MR. VON DE BUR: You may not remember, Tom, but  
8 I did get an e-mail from you accepting the changes  
9 that we made.

10       MR. HEALEY: Okay. Very good.

11       MR. VON DE BUR: And I haven't changed it since  
12 then.

13       MR. HEALEY: I trust you. But I am still  
14 bringing up my laptop to look for the e-mail,  
15 nonetheless.

16       JUDGE DUGGAN: Okay. By this language it says  
17 that Staff feels the request for extension of time  
18 is not justified and the next sentence states, Staff  
19 recommends the Commission grant the extension of  
20 time.

21       MR. VON DE BUR: Initially that was our  
22 response, was that we objected to the second

1 extension of time. Since that point the work has  
2 taken place and we're willing to grant an extension  
3 of time to allow for the 12-month billing period and  
4 to cover the extended time period that it took to  
5 complete the job.

6 JUDGE DUGGAN: Let me ask you this. Is there a  
7 requirement for a proposed order, a circulation on  
8 this, does anybody know -- if I want to enter a  
9 different order, is there a requirement that I  
10 circulate that proposed order? Mr. Healey?

11 MR. HEALEY: I don't know the answer to that,  
12 your Honor.

13 JUDGE DUGGAN: Okay. Because I'm inclined to  
14 change some things here in this agreed order and --  
15 but, yet, I need a little time to think about it, so  
16 I can't -- I mean, basically, I had in mind that I  
17 would -- because I anticipated that we were going to  
18 have this report today that it was all completed, in  
19 which case either the extension request is either  
20 moot or we go ahead and just say we grant it.

21 MR. HEALEY: Your Honor, if I may. I might  
22 suggest that I don't think the request is moot given



1 that the record would reflect the completion of the  
2 project after the last deadline for completing it.

3                   And so even though the project has  
4 been complete, we would still like another record  
5 that reflects completion of the project within the  
6 time allowed by the Commission.

7       JUDGE DUGGAN: Was it completed by October 30?

8       MR. HEALEY: Yes, it was put in place  
9 October 19th.

10       JUDGE DUGGAN: And is your report something that  
11 you were going to submit or just your testimony?

12       MR. VON DE BUR: Actually the completion report  
13 and the inventory report have been submitted and  
14 docketed. And I have copies here for your use, if  
15 you want.

16       JUDGE DUGGAN: Okay. Oh, you have marked them  
17 as exhibits. Okay. I didn't know that they were  
18 marked and admitted exhibits or not.

19       MR. VON DE BUR: They're not really exhibits, I  
20 guess, but they have been docketed for the record.  
21 Maybe I'm confused. Maybe they are --

22       JUDGE DUGGAN: No. But these are two different

1 documents, correct?

2 MR. VON DE BUR: That's correct.

3 JUDGE DUGGAN: Are you aware of what we're  
4 referring to here, Mr. Healey? They have project  
5 status report T08-166, would you be aware of what  
6 that document is?

7 MR. HEALEY: I believe I have seen a completion  
8 report that was submitted by the Railroad. And  
9 several days after that Mr. Von De Bur had  
10 confirmed, in fact, receipt of that report.

11 JUDGE DUGGAN: Okay. So that's the completion  
12 report.

13 And then there's US DOT crossing  
14 inventory form. Are you aware of that?

15 MR. HEALEY: Which I believe has been upgraded  
16 to reflect the installation of the warning devices,  
17 yes.

18 JUDGE DUGGAN: Okay. And the reason I'm asking  
19 is is whether we can go ahead and mark and admit  
20 these exhibits without you having them in front of  
21 you.

22 MR. HEALEY: I would have no objection to that,

1 your Honor.

2 JUDGE DUGGAN: Okay. I don't know where we're  
3 at in exhibits here, so let's just mark the  
4 completion report as -- is it Commission exhibit or  
5 is it Petitioner's exhibit? Mr. Healey?

6 MR. HEALEY: Joe, do you have a preference?

7 MR. VON DE BUR: That's fine, we can submit them  
8 as Commission orders, since we don't know what the  
9 current number of exhibits is. I know I hadn't  
10 submitted any previously.

11 JUDGE DUGGAN: Should it be the Commission  
12 exhibit or Petitioner's exhibit or no one cares?

13 MR. HEALEY: Your Honor, we don't have a  
14 preference, but I agree with Mr. Von De Bur that in  
15 light of the confusion over numbering, it may make  
16 sense to make it Commission Exhibits 1 and 2.

17 JUDGE DUGGAN: Okay. Very good. We'll make it  
18 Staff -- Illinois Commerce Commission Staff  
19 Exhibit 1 will be the project status report, the  
20 completion report. And Illinois Commerce Commission  
21 Staff Exhibit 2 is marked as -- for the US DOT  
22 inventory, is that correct, Mr. Von De Bur, that

1 Exhibit 2 is marked for the US DOT inventory?

2 MR. VON DE BUR: That's correct.

3 JUDGE DUGGAN: And Exhibit 1 is marked

4 completion report, correct?

5 MR. VON DE BUR: That's correct.

6 JUDGE DUGGAN: Okay.

7 So you move that these go into --

8 admitted, correct?

9 MR. VON DE BUR: Yes, your Honor.

10 JUDGE DUGGAN: And, Mr. Healey, no objection?

11 MR. HEALEY: No objection, your Honor.

12 JUDGE DUGGAN: Very good. Exhibits 1 and 2 are

13 admitted.

14 (Whereupon, Staff's Exhibits

15 1 and 2 were marked for

16 identification and admitted

17 into evidence.)

18 JUDGE DUGGAN: Okay. Then back to the drafting

19 of the order, then I think -- yeah, we can probably

20 take it as is except I may have to submit -- or

21 put --

22 MR. VON DE BUR: Your Honor, if I may, the

1 parties are aware that you might want to make  
2 changes to the order somewhat. If there's no  
3 objection, I can submit that electronically for your  
4 review.

5 MR. HEALEY: No objection.

6 JUDGE DUGGAN: Yeah, well, my only concern is  
7 the proposed order requirement, we can run around  
8 circles doing that, just for me to make what is  
9 going to be a format -- a formality change rather  
10 than substance. And the only thing I can see is  
11 whether it would require an analysis paragraph,  
12 but -- well, in any event, you two agree that  
13 Mr. Von De Bur can submit this, what has been  
14 presented, as the agreed order.

15 Well, I guess what I'll have to do is  
16 this, if there is a proposed order requirement, are  
17 you going to waive the proposed order requirement,  
18 Mr. Healey?

19 MR. HEALEY: Yes, your Honor.

20 JUDGE DUGGAN: And, Mr. Von De Bur, the same  
21 question to you.

22 MR. VON DE BUR: Yes, your Honor.

1 JUDGE DUGGAN: And that's the only two parties,  
2 that's right. IDOT was here, but they're not  
3 actually a party -- well, they were a plaintiff.

4 MR. HEALEY: Your Honor, so that we're clear.  
5 You had indicated you needed to make a change to the  
6 proposed order, but you said it was format-related  
7 and not substantive related.

8 JUDGE DUGGAN: Correct.

9 MR. HEALEY: Okay. That's fine. We have no  
10 objection to that.

11 JUDGE DUGGAN: It does look like IDOT's a party  
12 and IDOT is not here to waive that proposed order  
13 requirement.

14 Anyway, it's in evidence and the  
15 matter is completed. And at this point Staff is  
16 still recommending, according to this order, that  
17 the extension of time be granted and that's  
18 agreeable with the Railroad, correct, Mr. Healey?

19 MR. HEALEY: That is correct, your Honor.

20 JUDGE DUGGAN: All right. Then if there's  
21 nothing else, we'll mark this record heard and  
22 taken.

1                               Thank you.

2       MR. HEALEY:   Thank you, your Honor.

3       MR. VON DE BUR:   Thank you, your Honor.

4                               HEARD AND TAKEN

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